PRIVY COUNCIL REPORT

Lim Teng Huan v Ang Swee Chuan

PRIVY COUNCIL (ON APPEAL FROM BRUNEI) — APPEAL NO 16 OF 1991
LORD BRIDGE OF HARWICH, LORD OLIVER OF AYLMERTON, LORD BROWNE-WILKINSON, TELFORD GEORGES J AND SIR MAURICE CASEY
25 NOVEMBER 1991

Land Law *— Estoppel — Proprietary estoppel — Defendant relying on agreement with plaintiff to build house on land — Whether plaintiff perpetually estopped from claiming title to land conditional upon compensation to be paid to plaintiff — Assessment of compensation payable*

The appellant and respondent purchased a piece of land at a price which they provided equally. The respondent subsequently built a house on the land at his own expense. The appellant and respondent then entered into an agreement whereby the appellant agreed to exchange his undivided half share in the land with another piece of land belonging to the respondent ('the agreement'). It was the parties' common ground that the agreement was void for uncertainty. The appellant applied to the High Court, inter alia, for a declaration that he was the owner of one-half of the undivided share in the land. The respondent counterclaimed for a declaration that he was the sole beneficial owner of the appellant's share in the land. At the trial, the appellant abandoned his claim and the High Court dismissed the respondent's counterclaim. The respondent's appeal before the Court of Appeal was allowed, on the ground that the respondent had become solely entitled to an absolute interest in the house and in the land under the doctrine of proprietary estoppel conditional upon the respondent paying the appellant $217,500 by way of compensation for the loss of the appellant's half share in the land. The amount of compensation took into account the cost of preparatory works carried out on the land based on the respondent's evidence. The Court of Appeal, however, did not order the appellant to transfer his half share in the land to the respondent. The appellant appealed. The respondent cross-appealed to seek an order that the appellant transfer his share in the land to him.

Held, varying the order of the Court of Appeal as indicated below:

(1) The sole purpose of the agreement was to regularize the position so that the respondent's house would be built on land to which he was solely entitled. The inference that the respondent proceeded thereafter in reliance on the agreement was thus inevitable. The

Court of Appeal was therefore right in holding that the appellant was perpetually estopped from claiming title to his one-half share of the land.

(2) In the absence of acceptance by the parties that the court should act on the respondent's vague evidence on the cost of the preparatory works, it was not legitimate for the Court of Appeal to determine the unimproved value of the land on such evidence. The registrar should therefore be directed to determine by way of an inquiry the unimproved value of the land on the assumption that no preparatory work had been carried out.

(3) The appellant would be ordered to transfer his one-half share of the land to the respondent on payment to him by the respondent of a sum equal to one-half of that found by the inquiry and provided that there is prior written approval from His Majesty the Sultan in Council as required under s 23 of the Land Code (Cap 40).

Case referred to

1 *Taylors Fashions Ltd v Liverpool Victoria Trustees Co Ltd* [1982] QB 133; [1981] 1 All ER 897 (folld)

Sir Michael Ogden QC and *Beverley Ann Rogers* (*Cameron Markby Hewitt*) for the appellant.

George Newman QC and *TC Chan* (*Finers*) for the respondent.

Cur Adv Vult

Lord Browne-Wilkinson (delivering the judgment of the court): This is an appeal by Lim Teng Huan ('Mr Lim') from an order of the Court of Appeal of Brunei Darussalam dated 20 December 1990 which allowed an appeal by the other party, Mr Ang Swee Chuan ('Mr Ang') from a judgment of Mr Commissioner Mayo dated 19 June 1990.

The appeal relates to a parcel of land of approximately two acres described as Lot 14513 EDR 13464 at Kampong Subok. That land belonged beneficially to Mr Lim and Mr Ang in equal shares. Mr Ang, at his own great expense, built a house on the land. The Court of Appeal held that, under the doctrine of proprietary estoppel, Mr Ang had become solely entitled to an absolute interest in the house and land conditionally upon paying to Mr Lim the sum of $217,500 by way of compensation for the loss of his half share in the land. The Court of Appeal did not order Mr Lim to transfer his half share in the property to Mr Ang: Mr Ang cross-appeals seeking such an order.

Mr Ang and Mr Lim are cousins who were formerly close friends. In 1975 they purchased the land at a price of $75,000 which they provided equally. Although both are resident in Brunei, they are not citizens of Brunei. The land was therefore transferred into the names of their respective fathers who were Brunei citizens. Mr Lim's father died in 1978: Mr

Ang's father in 1983. Mr Lim sues as administrator of his father's estate. Soon after the purchase in 1975 certain limited works were done on the land at the joint expense of both parties.

In 1982, Mr Ang resolved to build a house on the land for his own occupation. He carried out extensive preparatory works on the land at a cost to himself in the region of $300,000. In April 1984 Mr Ang started to construct a house at his own expense. The house was completed in November 1985 at a cost of over $1m. On completion, Mr Ang went into occupation and fenced in virtually the whole of the land. At the trial there was a dispute as to the extent of Mr Lim's knowledge of the construction of the house. Mr Ang said Mr Lim knew all about it from the start: Mr Lim said he didn't know anything of what was happening until shortly before March 1985, by which time the construction of the house had reached first floor level.

However that may be, on 15 March 1985 the parties entered into an agreement. The agreement (which was not happily worded) defined Mr Lim's share of the land as '(A) portion of the said land' and Mr Ang's share as '(B) portion of the said land'. Recitals (3) and (4) of the agreement read as follows:

> (3) [Mr Ang] has at his sole cost and expense since April 1984 with the consent of [Mr Lim] constructed thereon both (A) portion of the said land and (B) portion of the said land described hereinbefore a residential house (hereinafter referred to as 'the said house'). [Mr Lim] hereby acknowledges that he has no claim whatsoever on the said house.
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> (4) The parties hereto has (sic) agreed to an exchange of land, [Mr Lim's] (A) portion of the said land in exchange for [Mr Ang's] parcel of land described in the schedule hereto (hereinafter referred to as 'the said land').

The operative part of the agreement then provides for Mr Lim to exchange his undivided (A) share in the land for an unspecified parcel of land extending to one acre which, it was anticipated, the Government of Brunei would allot to Mr Ang as compensation for certain other land of Mr Ang which the government had acquired. It was common ground before the Court of Appeal and their Lordships' Board that this agreement was void for uncertainty since it was impossible to ascertain what land was to be provided by Mr Ang by way of exchange for Mr Lim's share of the land.

Mr Lim gave very conflicting evidence about the agreement. He first alleged that it was a forgery, but after expert handwriting evidence had been obtained withdrew his allegation. The judge found that Mr Lim knowingly entered into the agreement and before their Lordships' Board it was accepted that it was his document.

At some stage Mr Lim and Mr Ang, who had previously been very close friends, fell out. Mr Lim made no complaint about Mr Ang's construction of the house or his use of it as his residence until 1986. In March 1988 Mr Lim started these proceedings claiming: (1) a declaration that he was the owner of a one-half undivided share in the land, including all fixtures thereon; (2) possession of the land; (3) mesne profits; (4) an account of rentals due; (5) damages; and (6) an order for demolition of the house. Mr

Ang resisted the claim and made a counterclaim for (1) a declaration that he was the sole beneficial owner of Mr Lim's share; (2) an injunction restraining Mr Lim from entering onto the land or dealing with his share in it; and (3) further or other relief. A

At the very outset of the trial, Mr Lim abandoned his claim, leaving only the counterclaim to be determined. On the counterclaim, Mr Commissioner Mayo, whilst apparently accepting that the agreement of March 1985 was void for uncertainty, attached great importance to recitals (3) and (4) as showing the parties' intentions. He said that the two recitals should be read together and stated that they provided some evidence that Mr Lim did in fact consent to the construction of the house being proceeded with but that such consent was conditional upon his receiving other land in exchange for his half interest in the land in question. He made the following finding: B C

> I therefore believed that [Mr Ang] did think that [Mr Lim] would not object to a house being erected on the land which would be used exclusively for his purposes. However having said this I also believe that it was in the plaintiff's mind that if the land was to be used for such a purpose he would receive satisfactory compensation to compensate him for the effective loss of his half interest in the land. D

Notwithstanding that finding, the trial judge held that no proprietary estoppel had been established, apparently on the grounds that Mr Lim had not been guilty of any conduct which would render it unconscionable for him to rely on his strict legal rights. He therefore gave Mr Lim leave to withdraw his claim but dismissed the counterclaim. E

On appeal, the Court of Appeal held that the judge had erred in law. The decision in *Taylors Fashions Ltd v Liverpool Victoria Trustees Co Ltd*[1] showed that, in order to found a proprietary estoppel, it is not essential that the representor should have been guilty of unconscionable conduct in permitting the representee to assume that he could act as he did: it is enough if, in all the circumstances, it is unconscionable for the representor to go back on the assumption which he permitted the representee to make. The Court of Appeal therefore held that, upon payment of compensation, Mr Ang was entitled to a declaration of ownership of Mr Lim's share and to the injunction which he sought on the counterclaim. F G

Before the Court of Appeal Mr Ang accepted throughout that he was bound to compensate Mr Lim for the value of the one-half share in the land. The only evidence of the value of the land before the Court of Appeal was an agreed valuation of the land alone at $760,000 and of the building (being the house) at $1.54m, making a total for the whole of $2.4m. The land element in this valuation had been valued on the basis that the preparatory works carried out in 1982 had been carried out at Mr Ang's sole expense. On the basis of evidence given by Mr Ang that those preparatory works had cost between $300,000 and $350,000, the Court of Appeal took the median figure of $325,000 and deducted this from the agreed valuation of the land at $760,000, giving an unimproved value for the whole of the land (ignoring the preparatory works) of $435,000 one-half of which H I

A is $217,500. They therefore made the declaration that Mr Ang owned Mr Lim's share and granted the injunction sought by the counterclaim but also ordered that such declaration and order were conditional upon Mr Ang paying to Mr Lim the sum of $217,500. Although Mr Chan (for Mr Ang) asked the court to direct that Mr Lim transfer his interest in the land to Mr Ang, no such direction was included in the Court of Appeal order.

B Before their Lordships' Board, two main points were in issue. First, were the Court of Appeal right in holding that Mr Lim was perpetually estopped from claiming title to his one-half share of the land? Secondly, were the Court of Appeal justified in assessing the compensation payable by Mr Ang in the way that they did?

C As to the first question, their Lordships have no hesitation in agreeing with the conclusions and reasoning of the Court of Appeal. Sir Michael Ogden (for Mr Lim) accepted that the Court of Appeal was right in applying the law as laid down in *Taylors Fashions*[1] and that recitals (3) and (4) to the agreement could provide evidence as to the parties' intentions, even if the agreement was legally unenforceable for uncertainty. However,

D he submitted that there was no evidence that Mr Ang had relied on the agreement or the recitals in it when he proceeded with the construction of the house. As a result one of the necessary ingredients for an estoppel was missing. Their Lordships reject this submission. Although Mr Ang did not give direct evidence of such reliance, the sole purpose of the agreement was

E to regularize the position so that Mr Ang's house would be built on land to which he was solely entitled: the inference that thereafter Mr Ang proceeded in reliance on that agreed arrangement is inevitable and was the inference rightly drawn by the trial judge in the passage to which their Lordships have referred.

Next Sir Michael Ogden submitted that in any event the right way to give

F effect to the estoppel was not to vest the whole of the land in Mr Ang absolutely but to confer on him a status of irremovability, ie Mr Ang should be entitled to live free in the house as long as he wished but if the house and land were sold in the future Mr Lim should be entitled to his half share. Sir Michael Ogden was not able to elucidate how long this status of irremov-

G ability was to endure: for example, on Mr Ang's death would those succeeding his estate also be irremovable? Moreover such an estoppel would not give effect to the manifest common intention of the parties viz that the land should belong outright to Mr Ang and that Mr Lim should be entitled to compensation for giving up his half share. Their Lordships agree with the decision of the Court of Appeal.

H As to the second point there is no disagreement on the general principle: Mr Lim should receive, by way of compensation, the value of the land as a site excluding such part of its value as is attributable to the preparatory works carried out in 1982. Whilst their Lordships are sympathetic to the desire of the Court of Appeal to produce finality in the matter, they are

I unable to accept that there was sufficient evidence to justify the Court of Appeal in assessing such value in the way that they did. Quite apart from there being serious doubts whether the cost of the preparatory works exactly represents the increase in the value of the land attributable to such

works, the evidence as to the amount of such cost was inadequate. At the trial, the valuation was agreed. At a late stage, Mr Chan (for Mr Ang) sought to call a contractor to prove the actual cost of preparatory works. For some reason, the judge did not permit this, but he did permit Mr Ang to be recalled to deal with the point. Mr Ang was asked approximately how much he had spent in 1982 to prepare the site: the note of his reply is 'Need to check records. Between 300 to 350,000'.

In their Lordships' view in the absence of acceptance by the parties that the court should act on such vague evidence, it was not legitimate for the Court of Appeal to determine the unimproved value of the land on such evidence, which on its face is merely an unverified approximation on a matter capable of exact computation and proof.

There was some discussion before the Board as to whether the parties had agreed to the Court of Appeal taking the course that they did. That involved an investigation of what exactly had transpired before the Court of Appeal, the suggestion being that the parties had agreed to the Court of Appeal taking the course which they did. The skeleton argument submitted by Mr Chan to the Court of Appeal included a submission that there was sufficient evidence to decide the value of the land: alternatively it was submitted that there should be an inquiry before the registrar. It is common ground that Mr Angking (counsel for Mr Lim before the Court of Appeal) did not invite the court to make an order for an inquiry. In their Lordships' view this falls short of an agreement by Mr Lim to accept a rough and ready assessment of the amount of compensation by the Court of Appeal. An inquiry must therefore now be directed.

It was agreed by the parties before the Board that, if an inquiry was necessary, the appropriate direction should be that the registrar should determine the unimproved value of the land ie the value of the land as at the date of the inquiry on the assumption that none of the works carried out on the land since 1981 had in fact been carried out.

As to the cross-appeal, Sir Michael Ogden accepted that, if the main point argued by him on the appeal failed, it would be right to order Mr Lim to transfer his share to Mr Ang, provided that the requirements of s 23 of the Land Code (Cap 40) (which renders void any transfer which has not received prior written approval from His Majesty the Sultan in Council) are not infringed.

Their Lordships are therefore of the opinion that the order of the Court of Appeal should be varied so as to provide as follows:

(1) an immediate declaration that Mr Ang is the beneficial owner of the share of the land formerly belonging to Mr Lim, conditional upon payment of the compensation mentioned at para (4) below;
(2) an immediate injunction restraining Mr Lim from entering upon or dealing with the land or any interest therein;
(3) an order for an inquiry as to the present value of the land on the footing that no works have been carried out thereon since 1981;
(4) an order that on payment by Mr Ang to Mr Lim of a sum equal to one-half of that found by the inquiry, Mr Lim transfer his one-half share of

A the land to Mr Ang or any person nominated by him and approved by His Majesty in Council under s 23 of the Land Code (Cap 40).

The order as to costs in the Court of Appeal will stand but Mr Lim must pay nine-tenths of Mr Ang's costs before their Lordships' Board.

Their Lordships will advise His Majesty the Sultan and Yang di-Pertuan B that the order of the Court of Appeal should be varied accordingly.

Order accordingly.

Reported by Wong Kian Kheong

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